



**Terri Kondeff**  
**Director**

# Legislative Services Office Idaho State Legislature

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## MEMORANDUM

**TO:** Senators THAYN, Lent, Ward-Engelking and,  
Representatives CLOW, Kerby, McCrostie

**FROM:** Elizabeth Bowen - Principal Legislative Drafting Attorney

**DATE:** January 11, 2022

**SUBJECT:** Temporary Rule

IDAPA 08.00.00 - Notice of Omnibus Rulemaking - Amendment to Temporary Rule - Docket No.  
08-0000-2100

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. If you have any questions, please call Elizabeth Bowen at the Legislative Services Office at (208) 334-4845. Thank you.

Attachment: Temporary Rule

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Paul Headlee, Deputy Director   Kristin Ford, Manager   Keith Bybee, Manager   April Renfro, Manager   Glenn Harris, Manager  
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## IDAPA 08 – STATE BOARD OF EDUCATION

DOCKET NO. 08-0000-2100

### NOTICE OF OMNIBUS RULEMAKING – AMENDMENT TO TEMPORARY RULE

**EFFECTIVE DATE:** A temporary rule was adopted under this docket number in the July 21, 2021, Idaho Administrative Bulletin, [Vol. 21-7SE, pages 675 through 794](#). The effective date of the amendments to the temporary rule is December 15, 2021.

**AUTHORITY:** In compliance with Section 67-5226, Idaho Code, notice is hereby given this agency has amended a temporary rule. The action is authorized pursuant Article IX, Section 2, Idaho Constitution and under Sections 33-105, 33-107, 33-116, 33-1001, 33-1002, and 33-1027, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for amending the temporary rule and a statement of any change between the text of the temporary rule and text of the amended temporary rule with an explanation for any changes:

Amendments are being made to the following temporary rule chapter:

**IDAPA 08.02.01, *Rules Governing Administration.***

This amendment to the temporary would allow for Average Daily Attendance, as it pertains to the calculation of support units for public school funding, to be calculated based on average FTE student enrollment rather than the current methodology that uses daily attendance. Without the amended temporary rule, it is estimated statewide that school districts and charter schools could see 1,015 less support units than estimated in the FY 2022 original appropriation with an estimated negative fiscal impact to public schools in the \$111M range. Conversely, by using average FTE enrollment, based on current school district and charter school reporting, it is estimated the fiscal impact would be approximately \$26M over the amount estimated in setting the FY 2022 public school appropriation. Based on the current FY2022 appropriation language prohibiting any withdrawals from the Public Education Stabilization Fund, this amount would automatically be offset by a reduction in the discretionary support unit value, eliminating the \$26M additional funding over what has been appropriated.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rules is appropriate for the following reasons:

The amended temporary rule will confer a benefit by providing stability to the public school funding during the 2021-2022 school year. Due to the ongoing effects of the pandemic school districts and public schools are experiencing very high levels of daily absenteeism. In a normal year, statewide, schools normally experience and annual attendance rate of 95%, that is 95% of public school students are in attendance on any given day. For the current school year, while schools are open and instructing students, they are reporting average attendance rates in 80% range. This has a significant negative impact on public schools budgets. While these students are still receiving instruction, schools are reporting higher rates of students being out sick than what they would have expected to see prior to the pandemic. The amendment would stabilize the funding by allowing average daily attendance to be calculated based on the number of enrolled students rather than those in school on each day.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the amendment to temporary rule, contact Tracie Bent, Chief Planning and Policy Officer, at (208) 332-1582 or [tracie.bent@osbe.idaho.gov](mailto:tracie.bent@osbe.idaho.gov).

DATED this 15th day of December, 2021.

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**THE FOLLOWING IS THE AMENDED TEXT FOR TEMPORARY RULE CHAPTER 08.02.01  
(Only Those Sections With Amendments Are Shown.)**

**IDAPA 08 – STATE BOARD OF EDUCATION**

**08.02.01 – RULES GOVERNING ADMINISTRATION**

***(BREAK IN CONTINUITY OF SECTIONS)***

**250. PUPIL ACCOUNTING AND REQUIRED INSTRUCTIONAL TIME.**

**01. Required Instructional Time.** Excluding transportation to and from school, lunch periods, passing times, and recess, schools must schedule at least the following instructional times: kindergarten, four hundred fifty (450) hours per year or equivalent amount of instruction through an online, distance, or blended learning format; grades one through three (1-3), eight hundred ten (810) hours per year or equivalent amount of instruction through an online, distance, or blended learning format; grades four through eight (4-8), nine hundred (900) hours per year or equivalent amount of instruction through an online, distance, or blended learning format; and grades nine through twelve (9-12), nine hundred ninety (990) hours per year or equivalent amount of instruction through an online, distance, or blended learning format. The equivalent amount of instruction shall be based on the amount of time reported for the same course or amount of coursework delivered in an in-person setting. (7-1-21)T

**02. Required Attendance.** All pupils will complete four (4) years of satisfactory attendance in grades nine through twelve (9-12) to graduate from an accredited high school, except those who are approved for early graduation. (7-1-21)T

**03. Day in Session When Counting Pupils in Attendance.** (7-1-21)T

**a.** A school day for grades one through twelve (1-12) may be counted as a “day in session” when the school is in session and students are under the guidance and direction of teachers in the teaching process for not less than four (4) hours or its equivalent of instruction per day. Lunch periods, breaks, passing time and recess will not be included in the four (4) hours. For kindergarten, each session will be at least two and one-half (2 1/2) hours per day. (7-1-21)T

**b.** Half-day Session. A half-day in session occurs when the students in grades one through twelve (1-12) are under the guidance and direction of teachers in the teaching process for a minimum of two and one-half (2 1/2) hours or its equivalent of instruction or the teachers are involved in staff development activities for not less than two and one-half (2 1/2) hours. Students attending less than a half-day in session may have their hours aggregated by week for reporting purposes. (7-1-21)T

**c.** Teacher In-service Activities. For grades one through twelve (1-12), not more than twenty-two (22) hours may be utilized for teacher in-service activities, based on the district approved calendar. In the event a school

district chooses to utilize full days instead of half-days, the attendance reported for these full days will be the average of the attendance for the other days of that same week. (7-1-21)T

**04. Day of Attendance - Kindergarten.** A day of attendance for a kindergarten pupil is one in which a pupil is under the direction and guidance of a teacher while school is in session or under homebound instruction. A homebound student is one who is unable to attend school for at least ten (10) consecutive days due to illness, accident or an unusual disabling condition. Attendance will be reported in half-day increments. Particularly, enrollment figures are not to be used for the beginning nor closing weeks of school. (7-1-21)T

**05. Day of Attendance (ADA) - Grades One Through Twelve (1-12).** A day of attendance is one in which a pupil is under the guidance and direction of a teacher or other authorized school district personnel while school is in session or is a homebound student under the instruction of a teacher employed by the district in which the pupil resides, with the exception as stated in “day in session” above. A homebound student is one who is unable to attend school for at least ten (10) consecutive days due to illness, accident or an unusual disabling condition. Attendance will be reported in full or half-days. (7-1-21)T

**06. Average Daily Attendance.** Average daily attendance will be reported by averaging the full-time equivalent enrollment by week for students receiving instruction. To be considered as a student receiving instruction the student must have regular contact with the applicable instructional or pupil service staff member and be completing assignments as applicable to the grade range and course the student is enrolled in. For funding purposes full-time equivalent enrollment in an alternative summer school program shall be based on the student attending (two hundred twenty-five (225) hours or more or the proportional share of hours up to one (1) average day of attendance. (12-15-21)T

**067. Full-Time Equivalent (FTE) Enrollment Reporting.** (7-1-21)T

**a.** Kindergarten students enrolled in one (1) LEA for a total number of courses that equal six hundred (600) or more minutes per week shall equal zero point five (0.5) FTE. Grade one (1) through grade twelve (12) students enrolled in one (1) LEA for a total number of courses that equal one thousand two hundred (1,200) or more minutes per week shall equal one (1) FTE. (7-1-21)T

**b.** Kindergarten students enrolled in one (1) or more LEAs for a total number of courses at all LEAs that equal less than six hundred (600) minutes per week, the FTE shall be based on the percentage of time each student’s courses are of six hundred (600) minutes. Grade one (1) through grade twelve (12) students enrolled in one (1) or more LEAs for a total number of courses at all LEAs that equal less than one thousand two hundred (1,200) minutes per week, the FTE shall be based on the percentage of time each student’s courses are of one thousand two hundred (1,200) minutes. (7-1-21)T

**c.** Kindergarten students enrolled in more than one (1) LEA for a total number of courses at all LEAs that equal six hundred (600) or more minutes per week and less than or equal to seven hundred fifty (750) minutes per week the FTE shall be fractionalized based on percentage of time for which the student is enrolled. Grade one (1) through grade twelve (12) students enrolled in more than one (1) LEA for a total number of courses at all LEAs that equal one thousand two hundred (1,200) or more minutes per week and less than or equal to the respective amounts in the following subsections the FTE shall be fractionalized based on percentage of time for which the student is enrolled: (7-1-21)T

i. Kindergarten: seven hundred fifty (750) minutes. (7-1-21)T

ii. Grade one (1) through grade three (3): one thousand three hundred fifty (1,350) minutes. (7-1-21)T

iii. Grade four (4) through grade eight (8): one thousand five hundred (1,500) minutes. (7-1-21)T

iv. Grade nine (9) through grade twelve (12): one thousand six hundred fifty (1,650) minutes. (7-1-21)T

**d.** Students enrolled in more than one (1) LEA for a total number of courses at all LEAs that equal more than the following minutes the FTE shall be based on the percentage of time for which the student is enrolled:

(7-1-21)T

- i. Grade one (1) through grade three (3): one thousand three hundred fifty (1,350) minutes. (7-1-21)T
  - ii. Grade four (4) through grade eight (8): one thousand five hundred (1,500) minutes. (7-1-21)T
  - iii. Grade nine (9) through grade twelve (12): one thousand six hundred fifty (1,650) minutes. (7-1-21)T
- e.** Courses in LEAs with block scheduling that results in students attending courses for a period greater than one (1) week in order to encompass all courses the student is enrolled in for the term will use average minutes per week over the applicable time period to determine the courses minutes per week. (7-1-21)T
- f.** Students enrolled in an alternative summer school or alternative night school program of two hundred twenty-five (225) or more hours of instruction may be counted as an additional zero point two five (0.25) FTE. Alternative summer school enrollment will be included in the October 1 reporting period. (7-1-21)T
- g.** Students enrolled in an alternative summer school or night school program of less than two hundred twenty-five (225) hours FTE will be determined based on the proportional share of two hundred twenty-five (225) hours the program consists of. (7-1-21)T
- h.** Students enrolled in more than one (1) LEA in grade seven (7) through grade twelve (12) shall count enrollment at all LEAs for determining eligibility of overload courses identified in Sections 33-4601 and 33-4602, Idaho Code. (7-1-21)T

**(BREAK IN CONTINUITY OF SECTIONS)**